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John Nielson—Specially Appearing

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TERWIN ADVISORS, LLC

Plaintiff,

vs.

MEGA CAPITAL FUNDING, INC. and
JOHN NIELSON,

Defendants.

CASE NO:

**JOINDER OF DEFENDANT JOHN
NIELSON TO NOTICE OF
REMOVAL OF DEFENDANT
MEGA CAPITAL FUNDING, INC.**

**JOINDER OF DEFENDANT JOHN NIELSON TO NOTICE OF
REMOVAL OF DEFENDANT MEGA CAPITAL FUNDING, INC.**

Specially appearing Defendant John Nielson (“Nielson”) hereby files his Joinder to Notice of Removal of Defendant Mega Capital Funding, Inc.

1. Although there is no express statutory requirement in 28 U.S.C. §§1332 and 1441 that all defendants either join the petition for removal or consent to such removal, there is widespread agreement among the district courts, including this District Court, that all named defendants over whom the state court acquired jurisdiction must join in the removal petition for removal to be proper. *Ell v. S.E.T. Landscape Design, Inc.*, 34 F. Supp. 2d 188, 193-194

(S.D.N.Y. 1999). One of the exceptions to this common law rule is where a non-joining defendant has not been served with service of process at the time the removal petition is filed. *Id.*, at 194.

2. To begin, Nielson contests service and jurisdiction in this action and nothing in this application waives Nielson's rights. *See General Investment Co. v. Lake Shore & Michigan Southern Railway Co.*, 260 U.S. 261, 267-268, 43 S. Ct. 106, 110 (1922) (a petition of removal, with or without reservations as to jurisdiction, is a special appearance, and leaves the validity of attempted service of process open to question in the District Court); *Reiser v. MELIO World Travel Services*, No. 83 Civ. 1297, 1983 U.S. Dist. LEXIS 13886, *18, fn. 10 (S.D.N.Y. Sept. 12, 1983) ("...an application for removal will be regarded as a special appearance not waiving any defects in service or jurisdiction [citations omitted]").

3. Acting within the protections afforded by *General Investment Co.* and its progeny, Nielson agrees to removal of this action for all of the reasons set forth in the Notice of Removal of Defendant Mega Capital Funding, Inc.

4. Nielson files the instant Joinder, rather than signing the Notice of Removal, to underscore his special appearance and preserve all of his rights to challenge service and jurisdiction in the District Court.

Dated: July 5, 2007

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By:


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